No. 20-CV-315

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

DUPONT EAST CIVIC ACTION ASSOCIATION, *et al.*,
APPELLANTS,

V.

MURIEL BOWSER, *et al.*,
APPELLEES.

ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEES

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STATEMENT OF THE ISSUES

Plaintiffs Dupont East Civic Action Association ("DECAA"), Nicholas DelleDonne, and Rachel Dubin oppose the construction of an apartment building, for which no permit has yet been sought, next to the Scottish Rite Temple, which is a historic landmark. They challenged in the Superior Court two decisions of the Historic Preservation Review Board ("HPRB") that (1) approved the conceptual design of the apartment building; and (2) denied plaintiffs' application to expand the boundary of the landmark to include the site of the proposed building. The issues presented are:

1. Whether the Superior Court properly dismissed plaintiffs' complaint for lack of jurisdiction because plaintiffs lacked standing to challenge the HPRB's approval of the conceptual design or determination of the landmark boundary where plaintiffs failed to allege that either decision caused any concrete injuries that were actual or imminent.

2. Whether the Superior Court properly dismissed plaintiffs' complaint because plaintiffs' claims were not ripe for review where the HPRB's decisions were insufficiently final and without concrete effects, and where withholding judicial review pending further administrative consideration of the controversy over the proposed building would not cause the parties significant hardship.

STATEMENT OF THE CASE

Perseus TDC ("Perseus"), a real estate developer, applied to the HPRB for conceptual design review of a proposed apartment building to be constructed near the Temple, a historic landmark. JA 200. Subsequently, DECAA applied to the HPRB to expand the boundary for the Temple landmark to include the site of the proposed building. JA 119. The HPRB approved the conceptual design for the apartment building and denied the boundary expansion application. JA 58. Plaintiffs filed a complaint in the Superior Court challenging both decisions and naming as defendants Mayor Muriel Bowser; David Maloney, State Historic Preservation Officer for the District of Columbia; Andrew Trueblood, Director of the District of Columbia Office of Planning; and Marnique Heath, Chair of the HPRB. JA 11-15. Defendants moved to dismiss the complaint under Super. Ct. Civ. R. 12(b)(1), 12(b)(6), and 12(b)(7) for lack of jurisdiction, failure to state a claim, and failure to join indispensable parties. JA 161-62. On March 2, 2020, the Superior Court granted the motion to dismiss under Rule 12(b)(1) and dismissed plaintiffs' complaint without prejudice. JA 313-14. On March 27, 2020, plaintiffs timely filed this appeal. JA 8.

STATEMENT OF FACTS

1. Historic Preservation In The District.

The Council of the District of Columbia enacted the Historic Landmark and Historic District Protection Act of 1978 ("Protection Act") to protect, enhance, and

improve landmarks and districts important to the history of the District of Columbia. D.C. Code § 6-1101. As relevant to this appeal, three actors are responsible for implementing local historic preservation programs: the Mayor's Agent for Historic Preservation ("Mayor's Agent"), the HPRB, and the Historic Preservation Office ("HPO").

Mayor's Agent approval is required to demolish or alter a historic landmark or a building in a historic district, to record a subdivision of a historic landmark or a property in a historic district, or to construct a building in a historic district or on the site of a historic landmark. D.C. Code §§ 6-1104 to 6-1107. For all subdivisions and some demolitions, alterations, and new construction, the Mayor's Agent "shall" refer the application to the HPRB for its recommendation. *Id.* §§ 6-1104(b), 6-1105(b), 6-1106(b), 6-1107(b). For an application referred to it by the Mayor's Agent, the HPRB, in turn, advises the Mayor's Agent on its "compatibility" with the purposes of the Protection Act. *Id.* § 6-1103(c)(1). The HPO is "the administrative office that serves as the staff to" the HPRB and the Mayor's Agent. *Id.* § 6-1102(6A).

Before applying for a permit for demolition, alteration, subdivision, or new construction, a prospective applicant may apply to the HPRB "for conceptual review of a project for compliance with the provisions of" the Protection Act. *Id.* § 6-1108(b). Although conceptual design review "is not required," it is "strongly

encouraged for new construction, substantial alteration, or any other work requiring a significant financial outlay for the preparation of permit plans." 10-C DCMR § 301.1. Conceptual design review serves "to allow applicants to benefit from the guidance of" the HPRB "in advance of a permit application" and to allow the HPRB "to review and take action at an early stage of design." *Id.* § 301.2. Significantly, an application for conceptual design review "does not constitute a permit application" and "is not subject to review by the Mayor's Agent." *Id.* § 301.3. The Mayor's Agent "may consider" the HPRB's "recommendation on an application for conceptual review as evidence to support a finding on a related application" for demolition, alteration, subdivision, or new construction, but "shall not determine compliance" with the relevant Protection Act requirements "based on an application for conceptual review." D.C. Code § 6-1108(c).

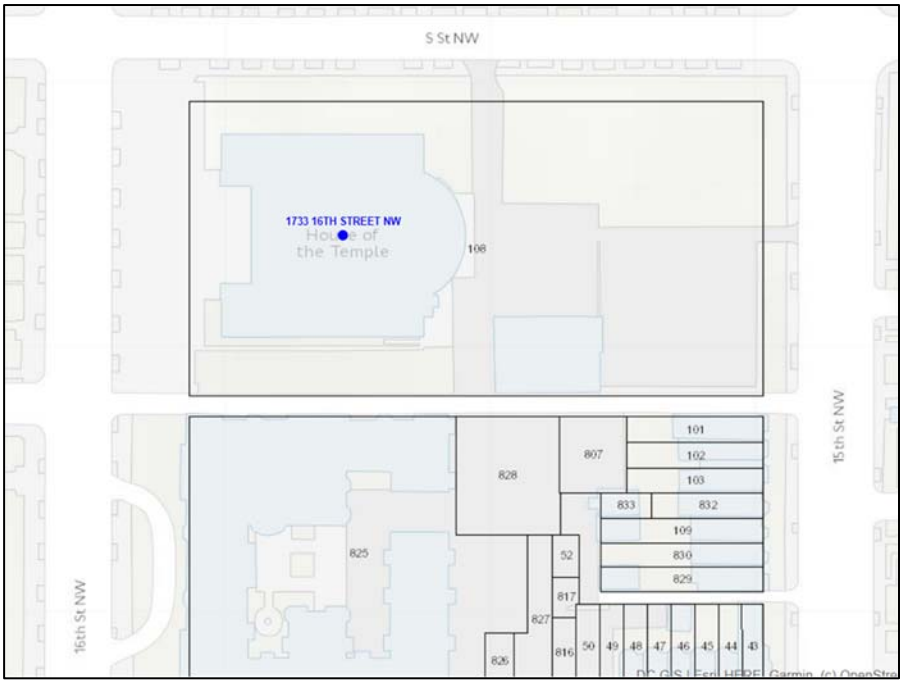
The HPRB must consider an application for conceptual design review at a public meeting and must "give great weight to any properly adopted written recommendations of the affected ANC [Advisory Neighborhood Commission] that are germane to the issues that fall within the Board's authority." 10-C DCMR §§ 322.1, 326.3. In advance of the meeting, the HPO must "prepare a written report and recommendation," evaluating each application "for consistency with the purposes of the [Protection] Act and with the Board's standards and guidelines" and recommending "any modifications needed to achieve consistency." *Id.* § 324.8.

Another responsibility of the HPRB is to "[d]esignate and maintain a current inventory of historic landmarks and historic districts in the District of Columbia." D.C. Code § 6-1103(c)(3). The HPRB must "hold a public hearing to receive information and public comments on each application for historic landmark or historic district designation." 10-C DCMR § 217.1. In advance of the designation hearing, the HPO must "prepare a written report and recommendation on the designation application." *Id.* § 216.1. After the hearing, the HPRB must "issue a written decision with respect to the proposed historic landmark or historic district designation." *Id.* § 219.1.

2. History Of The Scottish Rite Temple.

In 1910, the Supreme Council of the Thirty-Third Degree of Scottish Rite Masonry for the Southern Jurisdiction of the United States ("the Masons") "purchased a series of lots upon which they constructed" the Temple, which they completed in 1915. JA 62. The Temple is located at 1733 16th Street, NW, facing west toward 16th Street and bounded on the north by S Street. JA 11. The following map[1] illustrates the location of the Temple:

[1] D.C. Atlas Plus, https://bit.ly/37oI0te (last visited Dec. 16, 2020) (select "DC Basemap" and "Property and Land" layer and enter "1733 16th St NW" as address).



At the time that the Temple was completed, it was situated on what was known as Assessment and Taxation Lot 800 ("Lot 800"). JA 106. In subsequent decades, the Masons purchased the additional lots on 15th and S Streets, located to the east (and rear) of the Temple, and demolished the rowhouses that stood on those lots. JA 62. In 1976, Assessment and Taxation Lot 820 ("Lot 820") "was newly superimposed on the several lots the Masons had acquired by then." JA 106. In 2013, Lot 800 and the rowhouse lots were "consolidated to create a single record lot," Record Lot 108 in Square 192 ("Lot 108"). Mayor's Agent Decision & Order at 2, HPA No. 19-497 (Nov. 6, 2020), https://bit.ly/3aab09N.

The Temple site, formerly Lot 800, now occupies about the western half of Lot 108, which is bounded by 16th Street to the west, S Street to the north, 15th Street to the east, and a public alley to the south. JA 106-07. The eastern half of Lot

108, which consists of a parking lot and green space, includes the former adjacent lots purchased by the Masons after the completion of the Temple. JA 104, 106-07.

In 1964, the Joint Committee on Landmarks of the National Capital ("Joint Committee") designated the Temple as a historic landmark. JA 60. The Joint Committee categorized landmarks according to historic significance, with Category I reserved for "landmarks of great importance which contribute significantly to the national cultural heritage or that of the District of Columbia and its environs, and which must be preserved." Nat'l Capital Planning Comm'n, *Landmarks of the National Capital* (1973), https://bit.ly/2VAoiE2 (capitalization omitted); JA 166 n.2. The Joint Committee listed the Temple in Category III, denoting "landmarks of value which contribute to the cultural heritage or visual beauty and interest of the District of Columbia and its environs, and which should be preserved, if practicable." *Landmarks of the National Capital* (capitalization omitted); JA 166 n.2.

According to the HPO, the Joint Committee "did not designate properties as we do now; it merely put them on a list by name and address." JA 106. At the time, "[s]ite boundaries were of little importance because designation then conferred no protections." JA 106. When designated in 1964, the Temple site was still Lot 800; the lots to the east acquired by the Masons after construction of the Temple "had not been formally consolidated with the [T]emple by subdivision, or even informally,

by the creation of an [Assessment and Taxation] lot." JA 106. Later, when the designation listing of the Temple "was incorporated into the D.C. Inventory [of Historic Sites], it remained with no boundary specified." JA 106.

At present, Lot 108 is "located within two historic districts, with roughly three-quarters of the property on the west located in the Sixteenth Street Historic District and the remaining area on the east located in the Fourteenth Street Historic District." Mayor's Agent Decision & Order at 1. The Temple is "located entirely within the Sixteenth Street Historic District" and is a "contributing structure" in that district. *Id.* at 1-2.

3. The HPRB Approves The Conceptual Design For The Proposed Apartment Building.

In 2017, the Masons engaged Perseus, a local real estate developer, to develop the open space to the east of the Temple, on 15th and S Streets, NW. SA 10; JA 200. The Masons sought to develop the lot to cover the cost of $80 million in renovations to the Temple, SA 5, "including replacing outdated electrical wiring that creates a fire risk, remedying water damage, and restoring the Temple's dome, skylight, and windows," Mayor's Agent Decision & Order at 2. Perseus proposed to construct an apartment building containing 125 to 150 units. SA 8. In 2017, Perseus contacted the local Advisory Neighborhood Commissions ("ANCs") to coordinate meetings with community members for feedback on the project, and in

2018, Perseus had "several meetings" with the HPO to discuss the project. SA 10; JA 201.

In September 2018, Perseus applied to the HPRB for conceptual design review. JA 200; SA 26. On November 29, Perseus presented its development proposal at the HPRB meeting and the HPRB invited members of the public to share their views. SA 4-29. The Commissioner for ANC 2B, where the Temple is located, summarized the ANC's resolution supporting the project and recommending several changes to the proposal. SA 29-33. Plaintiffs Dubin and DelleDonne voiced their opposition to the project. SA 38-40, 76-80. The HPO summarized the recommendation in its staff report that the HPRB approve the project, subject to several significant revisions. SA 103-21.

In its written report, the HPO noted that the project would "require a subdivision" because the portion of the lot occupied by the Temple and the open space where the apartment building would be built were zoned differently. JA 200-01. The HPO also explained its "presumption that the site could be developed." JA 201. The "rear portion of the lot," with "a private garden and parking area for the [T]emple," was "not a public park," "was historically unrelated to the [T]emple, and was occupied by 19th century rowhouses until the late 20th century." JA 201. The garden, "having been created [with]in the past 25 years, [was] not part of the [T]emple landmark and not recognized as contributing to the historic districts in

which it is located." JA 201. The HPO recommended that the HPRB "find the general concept for new construction and subdivision compatible with the landmark" and "the 16th Street and the 14th Street Historic districts," subject to several revisions to "improve the proposal's compatibility." JA 205.[2]

At the November 29 meeting, the HPRB approved the conceptual design for the apartment building. HPRB, *HPRB Actions November 15 and 29, 2018*, at 2 (Nov. 2018), https://bit.ly/2JG07Bo. As recommended by the HPO, the HPRB "found the general concept for new construction and subdivision compatible with the landmark[and] the 16th Street and the 14th Street historic districts," subject to several design changes "needed to improve the proposal's compatibility." *Id.*

4. The HPRB Denies DECAA's Boundary Expansion Application, Sets The Temple Landmark Boundary As Former Lot 800, And Approves The Revised Conceptual Design For The Apartment Building.

In March 2019, DECAA submitted an application to the HPRB to "amend the existing landmark" boundary for the Temple site "to include all of [the] land behind the Temple." JA 119. The HPO reviewed the application and prepared an initial report recommending that the HPRB deny the boundary expansion. JA 60-65. The

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[2] Those revisions included reducing the floor-to-floor heights "to lower the building's height"; reducing the "proportional size of the windows"; reducing the "extent of glazing and width of the projections in the corner pavilions"; pulling back a pavilion and its penthouse to "open up views" and "provide a more deferential relationship to the [T]emple"; relocating the stairs to the basement; selecting cladding materials that fit the neighborhood; and developing the landscape plan with "evergreen plantings." JA 205.

HPO reasoned that the land in the expanded boundary has not "played a significant role in the history or events tied to the [T]emple." JA 64. Because that land "was acquired after 1915," it fell "outside the likely Period of Significance for the [T]emple." JA 64. Further, the HPO explained that "[t]he proposed expanded boundaries do not contribute to the significance of the Scottish Rite Temple" and that "[t]he open space is not notable as a designed or cultural landscape." JA 65.

The HPO subsequently issued a final report and recommendation concerning the proposed boundary expansion. JA 102-07. The HPO reiterated its initial recommendation that the HPRB should deny the application and added that the HPRB should "resolve the ambiguity of the landmark's present boundary by confirming it as the extent of former Assessment & Taxation Lot 800 upon which the [T]emple stood when completed in 1915." JA 107 (emphasis omitted).

On May 8, 2019, the HPRB issued a notice to the ANCs regarding the HPRB's upcoming May 23 and May 30 meetings and the projects filed for review, including DECAA's application for a boundary expansion and Perseus's revised conceptual design for the apartment building. JA 155-59. At the May 23 meeting, the HPRB unanimously denied the boundary expansion application ("May 2019 Order"). JA 58. The HPRB "determined that the former Lot 800 upon which the [T]emple stood when completed in 1915 was the appropriate boundary and voted to establish the boundary as such." JA 58.

At the same meeting, the HPRB also unanimously found the revised conceptual design for the apartment building to be "compatible with the landmark[and] the 16th Street and the 14th Street historic districts." JA 58. The HPRB determined that "final permit and subdivision approval [should] be delegated to staff, contingent on" the developer making several additional changes to the building's design. JA 58.

5. Superior Court Proceedings.

On June 22, 2019, plaintiffs filed their complaint in the Superior Court challenging two decisions in the HPRB's May 2019 Order: (1) the denial of DECAA's application to expand the Temple landmark boundary and decision to set the boundary as former Lot 800; and (2) the approval of the revised conceptual design for the apartment building. JA 11-15.

Plaintiffs alleged that the defendants' actions harmed them because they (1) violated plaintiffs' constitutional rights to due process and equal protection; (2) "caus[ed] turmoil, expense, and enormous time and effort," as plaintiffs took "steps to prevent" the apartment building project "from damaging their neighborhood"; (3) damaged "the splendor of the Temple Landmark Site and the consequent enjoyment" and "quality of life" of DECAA members and the individual plaintiffs; (4) "will increase traffic congestion and limit on-street parking" for DECAA members and the individual plaintiffs; (5) will "reduce the light for

residences of DECAA members"; and (6) "will damage the value of property owned" by DECAA members and the individual plaintiffs. JA 32-33.

Plaintiffs requested a variety of declaratory and injunctive relief, including: (1) a declaratory judgment that the site of the Temple landmark is Lot 820 and an injunction requiring the defendants to comply with that determination, JA 33-34; (2) a declaratory judgment that defendants violated the Protection Act and its regulations and an injunction requiring the defendants to comply with those provisions, JA 35-36; (3) a declaratory judgment that defendants violated the due process requirements of unbiased consideration and fair notice and an injunction mandating that the defendants comply with those requirements, JA 36-39; (4) a declaratory judgment that the May 2019 Order violated the D.C. Administrative Procedure Act, D.C. Code § 2-501 *et seq.* ("DCAPA"), and the Due Process Clause because it was "impermissibly retroactive," and an injunction requiring the defendants to comply with the requirements of due process and the DCAPA, JA 39-40; (5) a declaratory judgment that the May 2019 Order violated the Equal Protection Clause, JA 40-41; (6) an injunction directing the defendants to "comply with" the DCAPA, "recognize the Temple Landmark Site is co-extensive with Lot 820," and "deny the application for approval" of the apartment building, JA 44; (7) a declaratory judgment that the defendants violated the DCAPA in denying the boundary expansion application, that the application should be granted, and "that the

Temple Landmark Site should be extended to 15th Street," and an injunction requiring the defendants to expand the boundary, JA 46-47; and (8) a declaratory judgment that the defendants violated the DCAPA in approving the conceptual design for the apartment building, and an injunction "prohibiting approval of the design" for that project. JA 50.

Defendants moved to dismiss the complaint under Super. Ct. Civ. R. 12(b)(1), 12(b)(6), and 12(b)(7) for lack of jurisdiction, failure to state a claim, and failure to join indispensable parties. JA 161-62. Defendants argued that the court lacked jurisdiction because plaintiffs "complain[ed] about preliminary decisions reached by the HPRB, but the administrative process for the developer and owner of the subject property to obtain authority to construct the project is ongoing." JA 176. Defendants also submitted that plaintiffs' claims were not ripe because "the HPRB ha[d] given *tentative* approval for the construction of an apartment building, contingent on additional design changes," but Perseus "must still obtain permission to subdivide the lot, and—assuming that permission is obtained—must apply for permits to begin construction." JA 177 (citations omitted). Further, defendants argued that the HPRB decisions plaintiffs challenged were not final agency actions, given that "[a]n agency action that only sets forth how a proposed development project may proceed—but does not, in fact, authorize construction—is not final." JA 181. Defendants also challenged whether plaintiffs had standing to assert their DCAPA

claims, JA 182 n.14, and whether they satisfied the requirements of third-party standing, JA 192 n.20.

On March 2, 2020, the Superior Court granted the defendants' motion under Rule 12(b)(1) and dismissed the complaint without prejudice. JA 314. The court determined that it lacked "primary jurisdiction" over plaintiffs' claims because review of the HPRB's May 2019 Order required the HPRB's "specialized expertise," including "a review of the history of the neighborhood, an analysis of the factors that the HPRB considers in its determinations of Landmark Sites, and the experience typically employed by the HPRB in the first instance." JA 312. The court also concluded that it lacked jurisdiction because plaintiffs had "not exhausted their administrative remedies by seeking review before the Mayor's Agent and then petitioning" this Court. JA 313. Moreover, according to the court, "even if the issue were reviewable, the Plaintiffs ha[d] not demonstrated an irreparable harm that would occur if they had to comply with the agency review process." JA 313. As the court explained, "the May 23, 2019 Order only approves the concept of the Project design, and whether the construction is set to begin has not been demonstrated within the four corners of the Complaint." JA 313. Because the court determined that, for all these reasons, it "d[id] not have jurisdiction to hear these claims," it did not reach defendants' arguments under Rules 12(b)(6) and 12(b)(7). JA 313.

6. The HPRB Approves Subdivision Of Lot 108.

Meanwhile, on June 7, 2019, an agent of Perseus had applied under D.C. Code § 6-1106 for subdivision of Lot 108 into two lots. Notice of Public Interest: Application for Subdivision, 66 D.C. Reg. 11506 (Aug. 23, 2019). The HPO recommended that the HPRB "find the subdivision to be compatible with the landmark and the 16th Street and the 14th Street historic districts." HPRB, *Staff Report and Recommendation* 2, https://bit.ly/36XLP8n. In September 2019, the HPRB unanimously found the subdivision to be compatible with the landmark and the Sixteenth Street and Fourteenth Street Historic Districts. Mayor's Agent Decision & Order at 3.

In February 2020, the Mayor's Agent held a hearing on the subdivision application. Mayor's Agent, *Notice of Public Hearing*, https://bit.ly/2KbhXwk; *see* JA 301-02. In November 2020, the Mayor's Agent determined that the subdivision would be consistent with the purposes of the Protection Act and granted the subdivision application. Mayor's Agent Decision & Order at 5-8. DECCA has since filed a petition for review of that decision in this Court. Petition for Review, *Dupont E. Civic Action Ass'n v. D.C. Off. of Plan.*, No. 20-AA-693 (D.C. Nov. 23, 2020).

STANDARD OF REVIEW

This Court reviews the grant of a Rule 12(b)(1) motion to dismiss de novo "because the issue of subject matter jurisdiction is a question of law." *Pardue v. Ctr.*

City Consortium Sch. of Archdiocese of Wash., Inc., 875 A.2d 669, 674 (D.C. 2005) (internal quotation marks omitted). Standing and ripeness are also questions of law, which this Court reviews de novo. *Lewis v. D.C. Dep't of Motor Vehicles*, 987 A.2d 1134, 1138 (D.C. 2010) (standing); *Metro. Baptist Church v. D.C. Dep't of Consumer & Regul. Affs.*, 718 A.2d 119, 130 (D.C. 1998) (ripeness).

SUMMARY OF ARGUMENT

1. The Superior Court properly dismissed plaintiffs' complaint for lack of jurisdiction because plaintiffs lack standing to challenge the HPRB's May 2019 Order. The HPRB's approval of the conceptual design for the apartment building did not cause any actual injury because it did not impose any obligation, deny any right, or fix any legal relationship. Plaintiffs' allegations that approval of the mere proposal for an apartment building will cause future harms to the neighborhood if the apartment building is constructed are not sufficiently imminent and are wholly speculative. These harms, which depend on the developer obtaining the Mayor's Agent's approval for construction, will not arise, if at all, until some unspecified future date. Moreover, plaintiffs have not shown with any specificity that these harms are more than hypothetical.

For similar reasons, plaintiffs have not shown any actual, concrete injury caused by the HPRB's setting of the landmark boundary. Plaintiffs do not claim that the boundary determination, by itself, caused them any actual injury, and any

possible effect of that decision on the potential future approval of construction of an apartment building is not sufficiently imminent. As with the conceptual design, plaintiffs' allegations that failing to expand the landmark boundary will cause various harms to the neighborhood by eliminating a legal impediment to the construction are speculative.

Additionally, plaintiffs lack standing to assert their Due Process and Equal Protection Claims. Because plaintiffs have not alleged that they personally suffered any actual harm as a result of the purported "bias" that affected the conceptual design approval or the HPRB's alleged disparate treatment of the Temple landmark boundary, they lack standing to assert these claims. Plaintiffs' allegations that the HPRB violated the due process requirements of fair notice and a hearing also fail to confer standing because plaintiffs themselves had notice of and an opportunity to be heard regarding both challenged decisions and they cannot proceed on this claim based on the rights of unnamed third parties.

Finally, plaintiffs' voluntary expenditures of time and resources to oppose the apartment building project are not cognizable injuries because they were neither specific nor attributable to the conduct of the defendants.

2. In the alternative, the Superior Court properly dismissed plaintiffs' complaint because their claims are not ripe. The HPRB's decision to approve the conceptual design for the apartment building is not fit for judicial review because,

absent permits for subdivision and construction, approval of the conceptual design for the apartment building presents no concrete dispute between the parties. Moreover, approval of the conceptual design was not a sufficiently final agency action because it is a preliminary step that is not binding on the Mayor's Agent, who must ultimately approve an application for a construction permit. Nor have plaintiffs demonstrated that there would be significant hardship to the parties if the court withheld consideration while administrative proceedings flesh out the controversy.

Similarly, the HPRB's decision regarding the Temple landmark boundary presents no concrete dispute between the parties because agency action regarding the proposed apartment building is not sufficiently final without subdivision and construction permits. Further, it will not cause significant hardship to the parties to withhold judicial consideration of the boundary determination pending further administrative development.

ARGUMENT

I. Plaintiffs Lack Standing To Challenge The HPRB's May 2019 Order.

The Superior Court properly dismissed plaintiffs' complaint for lack of jurisdiction because plaintiffs have not suffered any cognizable injury.[3] This Court

[3] Although defendants did not fully develop the issue of plaintiffs' standing in the Superior Court, and that court did not rule on standing, this Court can consider this question for the first time on appeal. *Riverside Hosp. v. D.C. Dep't of Health*, 944 A.2d 1098, 1103 (D.C. 2008) (raising the issue of standing sua sponte).

"has followed consistently the constitutional standing requirement embodied in Article III," which requires plaintiffs to "allege some threatened or actual injury resulting from putatively illegal action in order for this court to assume jurisdiction." *Grayson v. AT&T Corp.*, 15 A.3d 219, 224 (D.C. 2011) (en banc) (alteration and internal quotation marks omitted). "The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court." *Padou v. D.C. Alcoholic Beverage Control Bd.*, 70 A.3d 208, 211 (D.C. 2013) (internal quotation marks omitted). Constitutional standing requires a plaintiff to show "(1) an injury in fact; (2) a causal connection between the injury and the conduct of which the party complains; and (3) redressability." *Id.* To establish an injury in fact, plaintiff "must have suffered . . . an invasion of a legally protected interest which is (a) concrete and particularized" and "(b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks omitted).

In this case, plaintiffs alleged that they suffered three categories of harms, none of which is sufficient for standing. First, they claimed that the HPRB's approval of the conceptual design for the proposed apartment building and determination of the Temple landmark boundary injured them because defendants "committed clear, multiple violations" of plaintiffs' constitutional rights. JA 32. Second, plaintiffs alleged that the defendants' actions and the May 2019 Order

"caus[ed] turmoil, expense, and enormous time and effort" as plaintiffs took "steps to prevent" the apartment building project "from damaging their neighborhood." JA 32. Third, plaintiffs speculated that the construction of the apartment building will cause several harms to the neighborhood, including damage to "the splendor of the Temple Landmark Site and the consequent enjoyment" and "quality of life" of DECAA members and the individual plaintiffs; "increase[d] traffic"; decreased "on-street parking"; "reduce[d] [] light for residences of DECAA members"; and lower property values. JA 32-33. Because none of these allegations would show that plaintiffs suffered an actual, concrete injury as a result of the HPRB's May 2019 Order, this Court lacks jurisdiction to hear their claims. *Padou*, 70 A.3d at 213.

A. Plaintiffs fail to allege an actual, concrete injury caused by the HPRB's approval of the conceptual design for the apartment building.

This Court does not have jurisdiction to hear plaintiffs' claims regarding the conceptual design approval because they have not suffered any injury in fact from that decision. Plaintiffs alleged that they are entitled to declaratory and injunctive relief because defendants violated the DCAPA and the Protection Act when they approved the conceptual design for the proposed apartment building. JA 35, 39-40, 47-50. Plaintiffs lack standing to assert these claims because they have failed to allege any concrete injury that is actual or imminent.

"In order to obtain judicial review," plaintiffs "must allege" that they have "been adversely affected or aggrieved by the findings and conclusions of which they complain[], or that [they have] suffered a legal wrong." *Dist. Intown Prop., Ltd. v. D.C. Dep't of Consumer & Regul. Affs.*, 680 A.2d 1373, 1377 (D.C. 1996). By itself, however, the HPRB's approval of the conceptual design for the apartment building does not "impose an obligation, deny a right, or fix any legal relationship." *Id.* Rather, the HPRB's conceptual design review is preliminary to an application for a construction permit, D.C. Code § 6-1108(b), which then must be reviewed and approved by the Mayor's Agent, *id.* § 6-1107(a). The purpose of conceptual design review is "to allow applicants to benefit from the guidance of" the HPRB "in advance of a permit application" and to allow the HPRB "to review and take action at an early stage of design." 10-C DCMR § 301.2. The regulations expressly provide that an application for conceptual design review "does not constitute a permit application." *Id.* § 301.3. Further, although the Mayor's Agent "may consider" the HPRB's "recommendation on an application for conceptual review as evidence to support a finding on a related application" for new construction, the Mayor's Agent is not bound by the conceptual design review. D.C. Code § 6-1108(c).

Thus, the HPRB's approval of the conceptual design for the apartment building was no more than a preliminary step in the process for Perseus to obtain a

construction permit. Because the approval decision alone has no effect on the rights of any party involved, plaintiffs cannot show that it has caused or threatened any injury. *Dist. Intown Prop., Ltd.*, 680 A.2d at 1378 (dismissing for lack of standing because the petitioner, who challenged findings and conclusions in a Mayor's Agent decision denying construction permits that had no legal effect, failed to allege any injury in fact).

It is not enough for plaintiffs to contend that the proposal of an apartment building will cause multiple harms to the neighborhood. JA 32-33. To support standing, "the actual or threatened legal wrong or injury must be certain, rather than conjectural or speculative." *Dist. Intown Prop., Ltd.*, 680 A.2d at 1377 (internal quotation marks omitted). At the outset, the mere possibility that the plaintiffs may be harmed at some unspecified future date if Perseus obtains a permit to construct the apartment building is far too remote to support an actual or imminent injury. *See Lujan*, 504 U.S. at 564 ("Such 'some day' intentions—without any description of concrete plans, or indeed any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require."); *City of Los Angeles v. Lyons*, 461 U.S. 95, 106-07 (1983) (holding that plaintiff lacked standing because he had failed to show that it was sufficiently likely that he would suffer any future injury from the City's chokehold policy or the conduct of its police officers).

Further, plaintiffs' abstract assertions that the HPRB's approval of the conceptual design will interfere with their "enjoyment" of the Temple and their "quality of life," JA 32, "fail[ed] to articulate a concrete and specific threat or injury." *York Apartments Tenants Ass'n v. D.C. Zoning Comm'n,* 856 A.2d 1079, 1085 (D.C. 2004) (holding that tenants' association challenging Zoning Commission's decision to grant modifications to previously-approved planned unit development failed to establish an injury in fact based on allegations that "the changes approved by the Zoning Commission" would "interfere" with the association's members' "enjoyment of their homes"). "While threats to non-economic interests such as use and enjoyment may constitute an injury in fact, the alleged threat[s]" to plaintiffs' enjoyment of the Temple and their quality of life are "merely conjectural and hypothetical." *Id.* Plaintiffs simply speculate that construction of an apartment building, the design of which has yet to receive final approval, will "increase traffic" and reduce "on-street parking," will "reduce [] light for residences of DECAA members," and will lower property values. JA 32-33. Thus, plaintiffs have not "suffered any actual or imminent harm." *Padou*, 70 A.3d at 212 (holding that plaintiff's allegations that renewing the liquor license of a nude dancing club would "negatively impact real property values" in the future failed to establish that plaintiff "suffered any actual harm" and "f[e]ll short of establishing that he [would] suffer any imminent harm").

Plaintiffs also alleged that they are entitled to declaratory and injunctive relief because, in approving the conceptual design, defendants violated plaintiffs' due process rights to "unbiased consideration" and to notice and a hearing. JA 36-39. But plaintiffs lack standing to assert these constitutional claims because they have not alleged any actual injury. First, plaintiffs' allegations that bias affected the HPRB's approval of the conceptual design failed to establish standing because plaintiffs have not alleged that they suffered any actual harm as a result of that decision. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) ("[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing."); *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1212 (D.C. 2002) (rejecting the proposition that "a plaintiff whose interests are not concretely affected by the denial of a procedural right would nonetheless have standing to challenge that denial in court" (internal quotation marks omitted)). Second, because plaintiffs had notice of and participated in the HPRB hearing on the conceptual design application, SA 38-40, 76-80, they lack standing to assert a speculative due process claim based on the rights of unnamed third parties. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."). Without more, plaintiffs' sweeping allegations that

the defendants violated their constitutional rights fail to establish that the conceptual design approval caused them any actual, concrete injury sufficient to establish standing. *See Valley Forge Christian Coll. v. Am. United for Separation of Church & State*, 454 U.S. 464, 489 (1982) (rejecting the idea that courts should be in the "business" of "correcting constitutional errors, and that cases and controversies are at best merely convenient vehicles for doing so" (internal quotation marks omitted)).

Finally, plaintiffs have not stated a cognizable injury based on the time and effort they spent opposing the project, JA 32, because they have not alleged with any specificity the amount of these expenditures, nor have they shown any "causal connection between" those expenditures and the conduct of the defendants. *Padou*, 70 A.3d at 211. Indeed, this Court has recognized that an organization's voluntary expenditure of time and resources to oppose a challenged action cannot confer standing. *See Equal Rights Ctr. v. Prop. Int'l*, 110 A.3d 599, 604 n.3 (D.C. 2015) (per curiam) (noting that an organization cannot "manufactur[e] the injury necessary to maintain a suit from its expenditure of resources on that very suit" (internal quotation marks omitted)). Thus, plaintiffs' opposition to the construction of the apartment building, standing alone, is not a constitutionally cognizable injury. *See Sierra Club v. Morton*, 405 U.S. 727, 739 (1972) ("[A] mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization

is in evaluating the problem, is not sufficient by itself" to confer standing. (internal quotation marks omitted)).

B. Plaintiffs fail to allege an actual, concrete injury caused by the HPRB's determination of the Temple landmark boundary.

This Court also lacks jurisdiction to hear plaintiffs' claims regarding the landmark boundary determination because they have not suffered any injury in fact from that decision either. Plaintiffs alleged that they are entitled to declaratory and injunctive relief because defendants violated the DCAPA and the Protection Act when they set the boundary of the Temple landmark as former Lot 800. JA 35, 39-40, 41-47. Plaintiffs anticipate that the boundary determination will harm them in the future because it "eliminated the legal impediment" to construction of the apartment building. JA 13. But the only effect of the HPRB's May 2019 Order was to confine historic landmark protection to the site of the Temple itself, not to approve the subdivision or authorize any construction. JA 58. Thus, plaintiffs have not shown that this decision imposed any actual harm because they have not been "adversely affected or aggrieved" by the HPRB's boundary determination, nor have they "suffered a legal wrong." *Dist. Intown Prop., Ltd.*, 680 A.2d at 1377. Plaintiffs' disagreement with the HPRB's determination, by itself, is not a cognizable injury for purposes of standing. *See, e.g.*, *Sierra Club*, 405 U.S. at 740 (reasoning that it would "undermine" the injury-in-fact requirement "to authorize judicial review at

the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process").

Likewise, plaintiffs have not established that any injury is imminent. Although the HPRB did not expand the boundary of the historic landmark to the eastern half of Lot 108, JA 58, the entire lot remains part of either the Sixteenth Street or Fourteenth Street Historic Districts, Mayor's Agent Decision & Order at 1, and subject to the Protection Act. Accordingly, because of the Temple landmark and the lot's location within the historic districts, Perseus had to apply to the Mayor's Agent for a permit to subdivide the lot. D.C. Code § 6-1106. Further, Perseus still must apply for a construction permit and go through the Mayor's Agent process yet again before any construction can begin. *Id.* § 6-1107. Any future harm that may result if the apartment building is constructed is far too remote to establish an imminent injury. *See Lujan*, 504 U.S. at 564. Nor have plaintiffs asserted any concrete injury. As detailed *supra*, pp. 23-24, their allegations that the apartment building will cause multiple harms to the neighborhood, JA 32-33, are speculative and abstract given that the developer has yet to obtain final approval of the design for the building. *See Padou*, 70 A.3d at 212; *York Apartments Tenants Ass'n,* 856 A.2d at 1084.

Plaintiffs also alleged that they are entitled to declaratory and injunctive relief because, in setting the boundary of the Temple landmark, defendants violated the

Due Process Clause by depriving plaintiffs of fair notice of the boundary determination and violated the Equal Protection Clause by applying a "different interpretation" of the Protection Act to other landmarks. JA 38-39, 40-41. However, plaintiff DelleDonne, on behalf of DECAA, applied for the boundary expansion, JA 116-34, such that plaintiffs had notice that the HPRB would be considering the landmark boundary and had an opportunity to be heard. *See* 10-C DCMR § 209.2 (requiring the HPO to mail notice of a filed application for an historic landmark to, among others, the applicant); *id.* § 209.3 (requiring the HPO to schedule a hearing on the application within 90 days by giving notice in the D.C. Register). Thus, as explained *supra*, p. 25, plaintiffs lack standing to assert a speculative due process claim based on the rights of unnamed third parties. *See Warth*, 422 U.S. at 499. Nor do plaintiffs have standing to assert their Equal Protection Claim, given that they have not alleged that they suffered any actual harm as a result of the HPRB's allegedly disparate treatment of the Temple boundary determination. *See, e.g., United States v. Hays*, 515 U.S. 737, 744-45 (1995) (holding that plaintiffs lacked standing to assert an equal protection challenge based on an impermissible racial classification where plaintiffs produced no evidence that they personally had been injured by the challenged classification).

Finally, for the reasons described *supra*, pp. 26-27, any time and effort plaintiffs voluntarily have spent opposing the apartment building are insufficient to

establish standing. *Equal Rights Ctr.*, 110 A.3d at 604 n.3. Because plaintiffs have not satisfied the required elements of standing, the Court must uphold the dismissal of the complaint for lack of jurisdiction.

II. Plaintiffs' Claims Are Not Ripe For Judicial Review.

The Superior Court properly dismissed plaintiffs' complaint because their claims are not justiciable for a second reason: they are not ripe.[4] Although this Court "is not bound by [the] constitutional concern[] of ripeness," it nevertheless has "followed th[is] principle[] as [a] prudential doctrine[] to promote sound judicial economy in recognition that an adversary system can best adjudicate real, not abstract, conflicts." *Metro. Baptist Church*, 718 A.2d at 130 (internal quotation marks omitted). In administrative cases, the ripeness requirement serves to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies," and to "protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id.* (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)).

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[4] Although the Superior Court did not explicitly address the ripeness of plaintiffs' claims, it did recognize that administrative proceedings had not yet reached the stage where judicial intervention was appropriate. JA 313. Moreover, defendants argued ripeness in their motion to dismiss. JA 177-78. Therefore, it is clear that this Court can properly consider the issue. *See, e.g.*, *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 896 (D.C. 2010) (raising "the issue of ripeness *sua sponte* even though neither party ha[d] discussed it in its briefs").

To determine "whether a challenge to administrative action is ripe for review, courts look to '(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration.'" *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 896 (D.C. 2010) (quoting *Metro. Baptist Church*, 718 A.2d at 130). The fitness of an issue for judicial decision "depends on whether it is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final." *Id.* (internal quotation marks omitted). The hardship of withholding court consideration, "from the standpoint of the challenging party, entails an examination of the certainty and effect of the harm claimed to be caused by the administrative action." *Id.* (internal quotation marks omitted). In this case, both prongs of the ripeness analysis weigh against judicial review of plaintiffs' challenges to the HPRB's May 2019 Order.

A. Plaintiffs' claims challenging the HPRB's approval of the conceptual design for the apartment building are not ripe.

The HPRB's decision to approve the conceptual design for the proposed apartment building was not ripe for judicial review because conceptual review is a preliminary step and is not binding on the Mayor's Agent, who must make the final determination under the Protection Act whether to approve a construction permit for the project. As a result, plaintiffs' complaint presents issues unfit for judicial decision because the conceptual design review was not sufficiently final and does

not present a concrete dispute. *Local 36 Int'l Ass'n of Firefighters*, 999 A.2d at 896. Nor have plaintiffs demonstrated "certainty and effect of the harm claimed to be caused" by the HPRB's decision. *Metro. Baptist Church*, 718 A.2d at 132 (internal quotation marks omitted).

First, approval of the conceptual design is not fit for review because this Court's "resolution of the legal issues would benefit substantially from a more concrete setting." *Local 36 Int'l Ass'n of Firefighters*, 999 A.2d at 897. Plaintiffs speculate that the construction of the apartment building will harm their enjoyment of the Temple, increase traffic, limit parking, reduce light, and damage property values in the neighborhood. JA 32-33. At present, however, there is no "concrete dispute between the parties" because Perseus still must obtain permit approval from the Mayor's Agent to construct the apartment building. *Metro. Baptist Church*, 718 A.2d at 131. The HPRB's approval of the conceptual design was an optional and preliminary step in the administrative process, *see* D.C. Code § 6-1108 (codifying conceptual review within the Protection Act's provision for preliminary review); 10-C DCMR § 301.1 (stating that "[c]onceptual design review is not required before application for a permit"), and plaintiffs have not yet felt the "effects" of that decision "in a concrete way." *Metro. Baptist Church*, 718 A.2d at 130 (internal quotation marks omitted). Indeed, the HPRB's approval of the conceptual design was "contingent on" Perseus making a number of significant changes to the proposed

design. JA 58. Thus, the Court "would benefit from deferring review until" Perseus submits a final plan in its application for a construction permit and the Mayor's Agent issues a final decision on the application. *Metro. Baptist Church*, 718 A.2d at 131 (internal quotation marks omitted). Only then would plaintiffs' concerns "arise[] in some more concrete and final form." *Id.* (internal quotation marks omitted); *see, e.g.*, *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 736 (1998) (holding that environmental groups' challenge to the Forest Service's land resource management plan was not ripe because review "would require time-consuming judicial consideration of the details of an elaborate, technically based plan, which predicts consequences that may affect many different parcels of land in a variety of ways, and which effects themselves may change over time").

Second, the agency's action was not "sufficiently final" because Perseus's design plans have not been formally approved under the Protection Act. *Local 36 Int'l Ass'n of Firefighters*, 999 A.2d at 896 (internal quotation marks omitted). In the May 2019 Order, all that the HPRB did was find "the revised concept for new construction and subdivision to be compatible with the landmark[and] the 16th Street and the 14th Street historic districts." JA 58. Further, the HPRB noted that final approval of the plan would be "contingent on" ten additional changes to the project's design. JA 58. Critically, an application for conceptual design review by the HPRB "does not constitute a permit application." 10-C DCMR § 301.3. Instead,

"the final authority for approving applications for construction in historic areas under the Historic Protection Act rests with the Mayor's Agent, not the HPRB." *N St. Follies Ltd. P'ship v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 589 (D.C. 2008).

Accordingly, before Perseus can begin construction of the apartment building, it had to obtain a permit from the Mayor's Agent to subdivide Lot 108, D.C. Code § 6-1106, and still must obtain a permit for construction, *id.* § 6-1107. Although the Mayor's Agent "may consider" the HPRB's recommendation on Perseus's application for conceptual review "as evidence to support a finding" on an application for a subdivision or construction permit, the Mayor's Agent "shall not determine compliance" with the Protection Act based on Perseus's application for conceptual review. *Id.* § 6-1108(c). Thus, "conceptual design reviews are not binding," and the HPRB's approval of the conceptual design "does not foreclose" the Mayor's Agent from denying a construction permit "once a formal application is filed." *N St. Follies Ltd. P'ship*, 949 A.2d at 589 (holding, likewise, that "[t]he HPRB's denial of petitioner's plans during a conceptual design review [did] not foreclose the HPRB or the Mayor's Agent from approving the same or modified plans once a formal application [was] filed").

Moreover, plaintiffs' petition for review of the Mayor's Agent's decision on the subdivision application is currently pending before this Court. Petition for

Review, *Dupont E. Civic Action Ass'n v. D.C. Off. of Plan.*, No. 20-AA-693 (D.C. Nov. 23, 2020). And ultimately, judicial review of the Mayor's Agent's decision on an application for a construction permit in the first instance will be in this Court, rather than the Superior Court. *See, e.g., Embassy Real Est. Holdings, LLC v. D.C. Mayor's Agent for Hist. Pres.*, 944 A.2d 1036, 1050 (D.C. 2008) (reviewing decision of the Mayor's Agent on developer's application for construction permits). As a result, "because it is not a final decision," and because review of any final decision on a construction permit will be in this Court, the HPRB's approval of the conceptual design for the apartment building was "not ripe for adjudication" before the Superior Court. *N St. Follies Ltd. P'ship*, 949 A.2d at 589; *see Foggy Bottom Ass'n v. D.C. Off. of Plan.*, 441 F. Supp. 2d 84, 91 (D.D.C. 2006) (ruling that plaintiff's claim challenging application to District of Columbia Zoning Commission for review and approval of a planned unit development was not ripe where "the application remain[ed] pending; it ha[d] not yet been approved and may never be").

Finally, the record does not demonstrate "the requisite certainty and effect of any alleged hardship" to plaintiffs of withholding court consideration. *Metro. Baptist Church*, 718 A.2d at 132 (internal quotation marks omitted). Plaintiffs do not claim that the conceptual design review itself has caused them any harm or that the HPRB's May 2019 Order requires anyone "to engage in, or to refrain from, any conduct." *Local 36 Int'l Ass'n of Firefighters*, 999 A.2d at 897 (internal quotation

marks omitted); *see Ohio Forestry Ass'n*, 523 U.S. at 733 (withholding review would not cause the parties significant hardship where the challenged land resource management plan did "not command anyone to do anything or to refrain from doing anything"). Instead, plaintiffs allege a slew of harms that the apartment building, once constructed, will cause them in the future. JA 32-33. These "potential harms," however, "are simply too abstract, hypothetical, and contingent to warrant judicial review at the present time." *Local 36 Int'l Ass'n of Firefighters*, 999 A.2d at 898 (alteration and internal quotation marks omitted). Because both prongs of the ripeness analysis counsel against review, this Court should dismiss plaintiffs' challenges to the conceptual design review as unripe.

B. Plaintiffs' claims challenging the HPRB's determination of the landmark boundary are not ripe.

The HPRB's decision to deny DECAA's boundary expansion application and set the boundary of the Temple landmark as Lot 800 was also not ripe for judicial review. Such review of the landmark boundary, like the conceptual design approval, should await further administrative proceedings to define the controversy over the proposed apartment building.

First, these claims are not fit for judicial decision because this Court "would benefit from deferring review until" the questions presented in plaintiffs' complaint "arise[] in some more concrete and final form." *Metro. Baptist Church*, 718 A.2d at 131 (internal quotation marks omitted). Plaintiffs' concern is that the boundary

decision "eliminated the legal impediment" to the construction of the apartment building. JA 13. Indeed, all of the harms plaintiffs alleged in their complaint flow from the anticipated construction of the apartment building, not from the boundary decision. JA 32-33. But the determination of the landmark boundary, standing alone, does not "inflict[] a concrete injury" on plaintiffs "at this time." *Metro. Baptist Church*, 718 A.2d at 131 (holding that the HPRB's decision to designate five properties owned by plaintiffs as part of a historic district was not ripe for review because there was not yet a "real dispute" between the parties). Plaintiffs' complaint simply does not present the challenges to the landmark boundary determination "in a sufficiently concrete factual form to ensure that a definitive [] ruling at this point would not be premature." *Id.* at 132; *see Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990) (observing that a regulation is not ordinarily considered ripe for review "until the scope of the controversy has been reduced to more manageable proportions, and its factual components have been fleshed out, by some concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm him").

Second, these claims are not ripe because withholding court consideration "will not cause the parties significant hardship." *Ohio Forestry Ass'n*, 523 U.S. at 733. As with the HPRB's approval of the conceptual design, setting the landmark boundary does not "command anyone to do anything or to refrain from doing

anything." *Id.* Nor does the boundary determination "inflict[] significant practical harm" on plaintiffs' interests, *id.*, given that all of Lot 108 remains protected as part of either the Sixteenth Street or Fourteenth Street Historic Districts, Mayor's Agent Decision & Order at 1. Consequently, before Perseus can begin construction, it had to apply to the Mayor's Agent for a subdivision permit, D.C. Code § 6-1106, and still must obtain a construction permit. *Id.* § 6-1107; *see supra* p. 34. Thus, plaintiffs "will have ample opportunity later to bring [their] legal challenge at a time when harm is more imminent and more certain." *Ohio Forestry Ass'n*, 523 U.S. at 734. Because plaintiffs have not shown that they have "felt the burdens" of the boundary determination in any concrete way, their claims are not ripe for review at this time. *Metro. Baptist Church*, 718 A.2d at 132.

CONCLUSION

This Court should affirm the dismissal of the complaint for lack of jurisdiction.

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CERTIFICATE OF SERVICE

I certify that on December 17, 2020, this brief was served through this Court's electronic filing system to:

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